

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DONALD RAULERSON, SR.,	:	
	:	
Plaintiff,	:	
	:	Civil Action No.: 95-2053 (RMU)
v.	:	
	:	Document No.: 88
JOHN ASHCROFT, U.S. Attorney General,	:	
	:	
Defendant.	:	

MEMORANDUM OPINION

GRANTING THE DEFENDANT’S RENEWED MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

This Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, case is predicated on a FOIA request that the *pro se* plaintiff, Donald Raulerson, submitted to the FBI Miami Field Office (“MFO”) and FBI Headquarters (“FBIHQ”) in 1995. In a March 29, 2002 Memorandum Opinion and Order, the court granted in part and denied in part the defendant’s motion for summary judgment and denied the plaintiff’s cross-motion for summary judgment. The court denied without prejudice the Federal Bureau of Investigation’s (“the FBI” or “the defendant”) motion for summary judgment to the extent that it relied on FOIA Exemption 7(D)’s implied confidentiality exemption, remanding this issue to the defendant for further evidence to support the implied confidentiality argument. The case is currently before the court on the defendant’s renewed motion for summary judgment filed pursuant to this court’s Order. For the reasons that follow, the court grants the defendant’s renewed motion for summary judgment.

II. BACKGROUND¹

A. Factual Background

On March 6, 1995, the plaintiff submitted a FOIA request to the MFO and the FBIHQ. Def.'s Mot. for Summ. J. at 1. On April 28, 1995, the MFO notified the plaintiff that the FBIHQ would handle his entire request. *Id.* at 1-2. Nearly four years later, on April 7, 1999, the FBI provided the plaintiff with a list of the files located in response to his requests, indicating that it had located more than 69,000 pages of responsive documents. *Id.* at 2, 4; Ex. C.²

After negotiations, the plaintiff agreed to reduce the scope of his request by 66,788 pages. *Id.* On February 29, 2000, FBIHQ forwarded the plaintiff 563 pages of materials that for the most part concern the plaintiff's attempt to kill a federal officer, racketeering, obstructing justice, and defrauding a financial institution charges. Def.'s Mot. for Summ. J. at 2, 4; Ex. D. Nonetheless, the FBI did not forward to the plaintiff all of the information that he had expected. Instead, it withheld certain information, mostly by means of excision, pursuant to various FOIA exemptions. Ex. D at 13. The FBI also informed the plaintiff that some of the documents he had requested originated with the Drug Enforcement Administration ("DEA") and Bureau of Prisons ("BOP"), and that those agencies would respond to the plaintiff directly. Def.'s Mot. for Summ. J. at 3. Finally, the FBI denied in full 13 pages of information concerning certain audiotapes. *Id.*

¹ The plaintiff does not contest the facts of this case as provided by the defendant. Pl.'s Opp'n at 1; Pl.'s Renewed Response at 1. Therefore, the court derives its background information from the defendant's motion for summary judgment and the defendant's renewed motion for summary judgment.

² For convenience, and because this opinion references exhibits only from the defendant's motion for summary judgment and the defendant's renewed motion for summary judgment, all further citations to exhibits from the first motion will simply refer to the exhibit. Citations to exhibits from the renewed motion will read "Renewed Ex. ____".

The FBI provided many of the information it had previously denied with its motion for summary judgment. Ex. D at 13, n.7; Ex. G. The FBI provided yet additional previously-denied information with its renewed motion for summary judgment. Renewed Ex. A.

B. Procedural History

The plaintiff filed his initial complaint with this court on November 3, 1995.³ On March 29, 2002, the court granted the FBI's motion for summary judgment to the extent it relied on arguments other than implied confidentiality. Mem. Op. dated Mar. 29, 2002 ("Mem. Op.") at 20-21. Specifically, the FBI used Exemption 7(D) to exclude several categories of information, including (1) information that individuals provided to the FBI under an implied grant of confidentiality, and (2) information that a law enforcement agency provided to the FBI under an implied grant of confidentiality. *Id.* The court, however, concluded that the FBI failed to meet the required evidentiary burden to show implied confidentiality. *Id.*

Because the existence of Exemption 7(D) implied confidentiality was unclear, and because the plaintiff's other arguments failed to demonstrate that the FBI should release all withheld information, the court denied the plaintiff's cross-motion for summary judgment. *Id.* at 21. Accordingly, the court ordered the FBI to file a renewed motion for summary judgment elaborating on its implied confidentiality argument. *Id.* at 17-18; Order dated Mar. 29, 2002.

At this point, the procedural history of this case becomes more complicated and

³ On March 31, 1998, this court granted the motions for summary judgment filed by federal defendants Department of Justice, Criminal Division; Executive Office of the U.S. Attorneys; Customs Service; and Drug Enforcement Agency. Mem. Op. dated Mar. 31, 1998.

critical. The court specified in its March 29, 2002 Order that the FBI's renewed motion and the plaintiff's response should address *only* the defendant's application of Exemption 7(D) to the information allegedly protected by implied confidentiality. Mem. Op. at 17-18, 20-21; Order dated Mar. 29, 2002. The ruling denied the plaintiff's cross-motion for summary judgment with prejudice. Mem. Op. at 21; Order dated Mar. 29, 2002.

As directed by the court, on May 10, 2002, the FBI filed a renewed motion for summary judgment. The FBI explained that in response to the court's ruling it identified the information withheld pursuant to Exemption 7(D) as it relates to implied confidentiality and reevaluated the need to withhold that information. Def.'s Renewed Stat. of Mat. Facts⁴ ¶ 12. The FBI determined that Exemption 7(D) does not justify the withholding of the information *from individuals* withheld pursuant to Exemption 7(D). Fourth Hodes Decl. ¶¶ 4-7. Accordingly, the FBI released the previously withheld information obtained *from individuals* and contained in FBI pages 353, 355, 364, and 451, attaching these pages to the renewed motion at Exhibit A. *Id.* ¶¶ 5-7; Def.'s Renewed Stat. of Mat. Facts ¶ 13.

Thus, the only contested issue remaining in this case is whether the defendant must release the information obtained *from a law enforcement agency* and withheld pursuant to Exemption 7(D), information allegedly provided pursuant to an implied confidentiality agreement. Def.'s Renewed Stat. of Mat. Facts ¶ 14; Mem. Op. at 15, 17-

⁴ The plaintiff has failed to comply with Local Civil Rule 56.1 by not filing a statement of material facts in dispute. Pl.'s Renewed Response at 1. Though the plaintiff states, "[a]ll facts that are now in dispute will be brought to this court's attention below or at another time," he does not dispute any material facts. *Id.* On the first page of its Renewed Motion for Summary Judgment, the FBI provided Mr. Raulerson with the text of Rule 56(e) and explained the consequences of failing to follow this rule. As the plaintiff does not contest the defendant's facts, the court determines that no material facts are in dispute.

18. This withheld information consists of only one-half of a line of text in a memorandum marked as FBI page 54. Renewed Ex. A (including the redacted version of FBI page 54 and the redaction marked as “b7D-4”); Fourth Hodes Decl. ¶ 8. The FBI continues to invoke Exemption 7(D) as grounds to redact this information. Def.’s Renewed Stat. of Mat. Facts ¶ 14; Fourth Hodes Decl. ¶ 8; Def.’s Renewed Mot. for Summ. J. at 14. However, in light of the new information it provides regarding the arrangement between the FBI and the law enforcement agency, the FBI now invokes Exemption 7(D) under the theory of an *express*, rather than implied, grant of confidentiality. *Id.*

III. ANALYSIS

A. Legal Standard for Summary Judgment in a FOIA-Review Case

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” FED. R. CIV. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Diamond v. Atwood*, 43 F.3d 1538, 1540 (D.C. Cir. 1995). In deciding whether there is a genuine issue of material fact, the court is to view the record in the light most favorable to the party opposing the motion, giving the non-movant the benefit of all favorable inferences that can reasonably be drawn from the record and the benefit of any doubt as to the existence of any genuine issue of material fact. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157-59 (1970). To determine which facts are “material,” a court must look to the substantive law on which each claim rests. *Anderson v. Liberty*

Lobby, Inc., 477 U.S. 242, 248 (1986). A "genuine issue" is one whose resolution could establish an element of a claim or defense and, therefore, affect the outcome of the action. *Celotex*, 477 U.S. at 322; *Anderson*, 477 U.S. at 248.

FOIA affords the public access to virtually any federal government record that FOIA itself does not specifically exempt from disclosure. 5 U.S.C. § 552; *Vaughn v. Rosen*, 484 F.2d 820, 823 (D.C. Cir. 1973). FOIA confers jurisdiction on the federal district courts to order the release of improperly withheld or redacted information. 5 U.S.C. § 552(a)(4)(B). In a judicial review of an agency's response to a FOIA request, the defendant agency has the burden of justifying nondisclosure, and the court must ascertain whether the agency has sustained its burden of demonstrating that the documents requested are exempt from disclosure under FOIA. 5 U.S.C. § 552(a)(4)(B); *Al-Fayed v. CIA*, 254 F.3d 300, 305 (D.C. Cir. 2001); *Summers v. Dep't of Justice*, 140 F.3d 1077, 1080 (D.C. Cir. 1998). An agency may meet this burden by providing the requester with a *Vaughn* index, adequately describing each withheld document and explaining the exemption's relevance. *Summers*, 140 F.3d at 1080; *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973) (fashioning what is now commonly referred to as a "*Vaughn* index").

The court may grant summary judgment to an agency on the basis of its affidavits if they:

[(a)] describe the documents and the justifications for nondisclosure with reasonably specific detail, [(b)] demonstrate that the information withheld logically falls within the claimed exemption, and [(c)] are not controverted by either contrary evidence in the record nor by evidence of agency bad faith.

Military Audit Project v. Casey, 656 F.2d 724, 738 (D.C. Cir. 1981). While an agency's affidavits are presumed to be in good faith, a plaintiff can rebut this presumption with evidence of bad faith. *SafeCard Servs., Inc. v. Sec. & Exch. Comm'n*, 926 F.2d 1197, 1200 (D.C. Cir. 1991) (citing *Ground Saucer Watch, Inc. v. CIA*, 692 F.2d 770, 771 (D.C. Cir. 1981)). But such evidence cannot be comprised of "purely speculative claims about the existence and discoverability of other documents." *Id.*

**B. The Defendant Properly Applies Exemption 7(D)
to the Redacted Information on FBI Page 54**

1) Legal Standard for Exemption 7(D)

Exemption 7 generally applies to "records or information compiled for law enforcement purposes" 5 U.S.C. § 552(b)(7). In addition, an agency attempting to withhold information requested pursuant to FOIA by invoking Exemption 7 must establish one of several enumerated harms, including the harm of releasing confidential information. *See id.*

To determine whether information was compiled for law enforcement purposes, the court considers first whether the investigatory activities that gave rise to the withheld documents are related to the enforcement of federal laws, and second whether there exists a nexus between the investigation and one of the agency's law enforcement duties. *Pratt v. Webster*, 673 F.2d 408, 420-421 (D.C. Cir. 1982). FOIA Exemption 7(D), as applied in the context of the identity of and information furnished by law enforcement authority, exempts from disclosure information supplied by a confidential source in the course of a criminal investigation. 5 U.S.C. § 552(b)(7)(D); *Jimenez v. FBI*, 938 F. Supp. 21, 30 (D.D.C. 1996) (citing *Lesar v. Dep't of Justice*, 636 F.2d 472, 492 (D.C. Cir. 1980)). A

source is “confidential” if it furnished information with the express or implied assurance of confidentiality. *Dep’t of Justice v. Landano*, 508 U.S. 165, 172 (1993).

**2) The Defendant’s Application of Exemption 7(D)
to the Redacted Information on FBI Page 54**

The FBI argues that it redacted information from FBI page 54 pursuant to Exemption 7(D) to protect confidential information. Fourth Hodes Decl. ¶ 8. The plaintiff’s response to the FBI’s renewed motion for summary judgment addresses the FBI’s renewed motion as well as other matters that either were or should have been addressed in the original summary judgment briefing submitted at the deadline for dispositive motions. Pl.’s Renewed Response. As parts one and three of the plaintiff’s response address matters for which the court has not authorized additional briefing, the court disregards those sections. *Id.* at 2, 5; Mem. Op. at 20-21.

Addressing the redaction on FBI page 54, the plaintiff states:

[I]t is highly unlikely that the FBI has to withhold an entire page to not breach confidentiality. Whatever mark/insignia that there is that identifies the agency, it simply has to be marked through. Thus, it is requested of this court to order disclosure of this document.

Pl.’s Renewed Response at 5. The court refers the plaintiff to Exhibit A attached to the defendant’s renewed motion for summary judgment. As the defendant has attached FBI page 54, with the confidential information “marked through” as the plaintiff suggested, the remaining contested issue is now resolved. Renewed Ex. A. Before granting summary judgment on this issue, however, the court evaluates whether the defendant’s redaction is lawful. FED. R. CIV. P. 56(c).

Evaluating the merits of the FBI’s application of Exemption 7(D) to the information redacted from FBI page 54, the court determines that the FBI, a criminal

investigation agency, generated the withheld information pursuant to its investigation of the plaintiff and his attempt to kill a federal officer. Third Hodes Decl. ¶ 52. Thus, the FBI compiled the withheld information for law enforcement purposes. *Pratt*, 673 F.2d at 420-421.

Furthermore, the uncontested evidence demonstrates that the withheld information is not available to the public and was redacted from page 54 to protect the identity of a law enforcement agency cooperating with the FBI. Fourth Hodes Decl. ¶ 8. This agency cooperated with the FBI pursuant to an express grant of confidentiality. *Id.* Because the FBI redacted information to protect the confidentiality of the information, FOIA Exemption 7(D) exempts this information from disclosure. *Jimenez*, 938 F. Supp. at 30; *Landano*, 508 U.S. 1 at 172. Thus, the defendant is entitled to summary judgment as a matter of law. *Celotex*, 477 U.S. at 322.

C. The FBI Has Provided All Reasonably Segregable Portions of FBI Page 54

In its earlier opinion, the court determined that the FBI provided reasonably segregable portions of the withheld documents. Mem. Op. at 19-20. Nevertheless, as the FBI's renewed motion for summary judgment supports redacting information, the court addresses the issue of segregability *sua sponte*.

Even if some portions of a requested document are exempt from disclosure, FOIA requires that any reasonably segregable information in that document shall be disclosed unless it is inextricably intertwined with the exempt portions. *Johnson v. Executive Office for U.S. Attorneys*, 310 F.3d 771, 776 (D.C. Cir. 2002). Regarding the one redaction currently at issue on FBI page 54, the FBI has redacted about one-half of a line of text from a memorandum to protect the confidential identity of a law enforcement

agency. Fourth Hodes Decl. ¶ 8. Reviewing page 54, the court determines that the redaction made pursuant to Exemption 7(D) removes only a few words which identify the confidential law enforcement agency. *Id.*; Renewed Ex. A. As a result, the court determines that the redaction is sufficiently limited and the FBI has provided all reasonably segregable portions of FBI page 54. *Johnson*, 310 F.3d at 776.

IV. CONCLUSION

For all these reasons, the court grants the FBI's renewed motion for summary judgment. An order directing the parties in a manner consistent with this Memorandum Opinion is separately and contemporaneously issued this _____ day of January, 2003.

Ricardo M. Urbina
United States District Judge

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DONALD RAULERSON, Sr.,	:	
	:	
Plaintiff,	:	
	:	Civil Action No.: 95-2053 (RMU)
v.	:	
	:	Document No.: 88
JOHN ASHCROFT,	:	
U.S. Attorney General,	:	
	:	
Defendant.	:	

ORDER

GRANTING THE DEFENDANT’S RENEWED MOTION FOR SUMMARY JUDGMENT

For the reasons stated in this court’s Memorandum Opinion separately and contemporaneously issued this _____ day of January, 2003, it is

ORDERED that the FBI’s renewed motion for summary judgment is
GRANTED.

SO ORDERED.

Ricardo M. Urbina
United States District Judge

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Civil Action No. 95-2053 (RMU)

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